IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 132 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

I G BELLINI

Appearance:

1. INCOME TAX REFERENCE No. 132 of 1989
MR MANISH R BHATT for Petitioner No. 1
MR MANISH K KAJI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion in

respect of assessment year 1979-80 :-

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that remittance of Rs.2,06,165/- was not liable to be included in the income of the assessee u/s. 9 or u/s. 26 of the I.T. Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not treating the Housing and motor car expenses of the assessee as perquisites ?

2. We have heard Mr MR Bhatt, learned senior standing counsel for the revenue and Mr Manish K Kaji, learned counsel for the respondent-assessee.

3. As far as question No. (1) is concerned, the Tribunal had proceeded on the footing that the controversy was fully covered by the decision of the Tribunal in the assessee's own case for assessment year 1977-78. That decision of the Tribunal for assessment year 1977-78 came to be confirmed by this Court in the case of this very assessee in its decision dated 17.6.1998 reported in (1999) 237 ITR 336. However, the Court made it clear that the Explanation added to Section 9(1)(ii) of the Income-tax Act, 1961, which was added by the Finance Act, 1983, came into force with effect from 1.4.1979 and the said Explanation reads as under :-

"Explanation.- For the removal of doubts, it is hereby declared that income of the nature referred to in this clause payable for service rendered in India shall be regarded as income earned in India."

In that case, the revenue had contended that the Explanation was merely clarificatory and, therefore, it would apply even to the assessee's case in respect of assessment year 1977-78. This Court negatives that contention on the basis of the reasoning which appealed to the High Court of Kerala in CIT vs. SR Patton, (1992) 193 ITR 49.

It is thus clear that in the instant case, although the assessment year is 1979-80 and, therefore, the Explanation added by the Finance Act, 1983 with effect from 1.4.1979 was squarely applicable, the

Tribunal in its decision dated 1.8.1984 failed to notice the said amendment brought into force with effect from 1.4.1979 and decided the matter in favour of the assessee.

4. At the hearing of the reference today, Mr MR Bhatt, learned senior standing counsel has pointed out the aforesaid statutory amendment. There is no dispute about the fact that the nature of the income which is the subject matter of question No. 1 is covered by Section 9(1)(ii) of the Income-tax Act, 1961 and the same was earned by the respondent-assessee for services rendered in India and, therefore, the same will have to be regarded as income earned in India.

For the aforesaid reasons, our answer to question No. 1 is in the negative i.e. in favour of the revenue and against the assessee.

5. As far as question No. (2) is concerned, there is no dispute about the fact that the controversy raised therein is concluded in favour of the assessee as per the decision of this Court in CIT vs. S.G. Pgnatala, (1980) 124 ITR 391. Accordingly, our answer to question No. (2) is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-